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SIPDIS

DEPARTMENT FOR AF/E, LONDON, PARIS FOR AFRICA WATCHERS

E.O. 12958: N/A

TAGS: [PREL](#) [PGOV](#) [KDEM](#) [KE](#)

SUBJECT: GOK PREPARES TO OUST ELECTORAL COMMISSION

REF: A. A. NAIROBI 2221

[1](#)B. B. NAIROBI 869

[1](#)C. C. NAIROBI 792

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SUMMARY  
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[1](#)1. On November 27, the Cabinet approved a draft constitutional amendment which will disband the Electoral Commission of Kenya (ECK) and remove all 22 current ECK commissioners. If, as expected, Parliament approves the measure before it recesses on December 18, the ECK will be replaced by an Interim Electoral Commission tasked with preparing the groundwork for a referendum on a new constitution that will be held in approximately one year. Passage of the amendment will be a welcome first step toward electoral reform and, if competent professionals are chosen, will reduce the possibility that the constitutional referendum will prove a flashpoint for renewed violence. We stand ready to consider providing assistance to the new body. We will follow progress and weigh in, where necessary, to press for further electoral reforms. End Summary.

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OUSTING THE ECK  
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[1](#)2. Pressure to disband the Electoral Commission of Kenya (ECK) has been building since the December 2007 general elections, when the ECK pronounced the Party of National Unity (PNU) presidential candidate, President Mwai Kibaki, had been re-elected under controversial circumstances. The announcement spurred a post-election crisis when supporters of the opposition Orange Democratic Movement (ODM) refused to recognize the result. The crisis was resolved when the PNU and ODM agreed to form a Grand Coalition government in late February 2008. As part of the power-sharing deal that ended the crisis, the PNU and ODM agreed to form a commission (known as the Kriegler Commission) to evaluate the integrity of the 2007 elections and to propose reforms to Kenya's electoral framework (ref c). The parties also agreed to write a new constitution, a process which is expected to last approximately one year (ref c).

[1](#)3. The Kriegler Commission presented its report to President Kibaki in September 2008 (ref a). The report found no evidence that the presidential elections had been rigged, but it roundly criticized the ECK for having failed to institute safeguards to protect the integrity of the elections. According to the report the election results at all levels were "irretrievably polluted" due to ECK incompetence. The Kriegler Commission recommended that the GOK disband the ECK and create a new electoral body.

[1](#)4. Upon receiving the Kriegler report, President Kibaki and

Prime Minister Raila Odinga formed a Cabinet sub-committee to create an implementation plan. However, efforts to scrap the ECK and remove its commissioners were complicated by the fact that ECK commissioners enjoy security of tenure, which is embedded in the constitution, and can only be removed for cause. On November 27, the Cabinet approved a Constitutional Amendment Bill (the Amendment) which, if passed by Parliament, will disband the ECK and remove all 22 current ECK commissioners from office. The Amendment will replace the ECK with an Interim Electoral Commission (IEC), tasked with administering the national referendum on a new constitution, as called for in the National Accord and Reconciliation Act of 2008. The IEC is also tasked with updating and correcting the voters register, which the Kriegler report criticized for being inaccurate and contributing to voter fraud. To avoid politicization of the new body, IEC commissioners will be appointed after a public application process which Parliament will oversee. Under the Amendment, the IEC will operate for no more than 15 months or until it organizes the referendum on a new constitution, whichever comes first. Parliament is expected to debate the Amendment before it adjourns on December 18.

15. COMMENT: We expect Parliament to adopt the Amendment before it adjourns on December 18. The transparent selection procedure for IEC commissioners in the Amendment is an important step towards creating public confidence in the body. The success of the IEC will, of course, be determined by the caliber of appointees, but passage of the Amendment will represent a welcome first step toward long-overdue reform of Kenya's electoral framework. We stand ready to consider providing assistance to the IEC. We are continuing

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to press hard for action. End Comment.  
RANNEBERGER